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## On the devaluation of Merit. An economic analysis of Spanish Premial Law

Thomas Baumert<sup>a</sup> \*<sup>a</sup> *Universidad Católica de Valencia, I.U. "Jovellanos", Valencia 46007, Spain*

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### Abstract

This paper studies the Spanish Premial Law applying an economic viewpoint. We reach the conclusion, that during the period studied (1995-2009) there has been a sharp increase in the number of civil order awarded, thus showing a phenomenon of “inflation”. This would imply a devaluation of the supposed merits underlying the awarding, meaning a corruption of the Premial system.

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### 1. Introduction

Generally speaking, incentives have received a broad attention, not only by economists, but also from related fields like sociology and law. This notwithstanding, interest has mainly centred on monetary incentives (for example Stiglitz, 2006), as this sort of compensation allows the receptor to maximise its utility (Becker, 1974), or on non-monetary incentives (like business cars, better offices, etc.) summarised under the term “fringe benefits”. Alternatively, economic analysis of law has studied mostly negative incentives, such

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\* Corresponding author.

E-mail address: [thomas.baumert@ucv.es](mailto:thomas.baumert@ucv.es)

as fines and punishment.<sup>i</sup> Nevertheless, one major category —if not *the* main category— of positive incentives used by States have so far been nearly neglected both by economists and jurists: the awarding of orders, medals, decorations and other honours that constitute the so called Premial Law, referring to which already Beccaria lamented that:

“Upon this subject [Premial Law] the laws of all nations are silent. If the rewards proposed by academies for the discovery of useful truths have increased our knowledge, and multiplied good books, is it not probable that rewards, distributed by the beneficent hand of a sovereign, would also multiply virtuous actions.” [Beccaria [1764] (1991), p. 83].

There are serious evidences that Beccaria intended to write a complete *Tract on Premial Law*, although he finally did not achieve this purpose (Jiménez, 1915:27). It was Dragonetti (1836) who published a *Treatise on virtues and rewards*. Nevertheless it is Jeremy Bentham, who might be considered the father of Premial Law with his work entitled *Théorie des peines et des recompenses*. Later, Le Grasserie (1900) published an important article in *La Scuola positive* dealing with this topic and in which he (erroneously) stated that he was the first to introduce the concept of Premial Law. Finally, it might be stressed that the probably most important monograph on this matter was published by a Spaniard, Luis Jiménez de Asúa (1915), entitled *La recompensa como prevención general. El Derecho Premial*.

## 2. Orders as incentives

Only very recently the works by Frey (2005) and Frey and Neckermann (2006) have drawn their attention on the topic from an economic viewpoint, setting a significant theoretical framework although lacking any empirical analysis.<sup>ii</sup> Frey (2005:4) points out some possible reasons why economists have so largely disregarded the study of awards:

- Firstly, awards may be considered to be less efficient as an incentive device, because they are not fungible and difficult to apply marginally.
- Secondly, awards may just be a reflection of success and high monetary income.
- Thirdly, economists assume that awards as such are of no interest to recipients as, after all, they cannot be consumed.

Yet, this last point deserves some deeper consideration, as, in fact, medals and orders were often used as a monetary substitute. For example, during the second German Reich (1871-1918) there existed a *Sonderklasse* (an especial class) of the main orders made completely of brilliants. After the awarding, these orders were usually given back to the Official Jeweller Godet, Wagner & Sohn y Gb. Friedländer in Berlin, who exchanged them with another piece made of simile-stones, paying the recipient the difference in cash. This procedure was indeed intended by the Kaiser as a form of “paying their subjects without offending their honour”.

This notwithstanding, there are major differences between awards and monetary compensations, that fully justify analysing them separately (Frey, 2005:5):

- The material costs of awards may be very low, or even nil, for the donor, but the value to the recipient may be very high. In this respect, the cost benefit balance is therefore unlike that of gifts (which are generally valued less by the recipient than what they cost to the donor).

- Accepting an award entails a special relationship, in which the recipient owes (some measure of) loyalty to the donor. The respective contract is, however, tacit, incomplete, and difficult (if not impossible) to enforce by the donor.
- Awards are a better incentive instrument than a monetary payment when the recipient's performance can only be vaguely determined.
- Awards are less likely to crowd out the intrinsic motivation of the recipients than monetary compensation.
- Awards are not taxed, while monetary income is.

In fact many authors like Rousseau and Bentham had a very negative attitude towards monetary compensations, while they strongly favoured orders and decorations. Thus, for example, the Genevan philosopher strongly rejected all sort of pecuniary reward, stressing his point of view the following arguments:

“[Monetary rewards] have the defect of not being public, of not appealing continuously to the eyes and the heart, of disappearing as soon as they bestowed and of not leaving any visible trace that stimulate emulation, perpetuating the honour that is supposed to accompany them.”

A similar attitude was shared by Jeremy Bentham, although with a less idealistic and more pragmatic point of view, as he concludes that “although [pecuniary rewards] act neither as an example nor forming the character, [...] they are frequently an indispensable necessity” (Bentham, 1818:II:103).

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The discussion about the convenience of pointing out from society those persons who have achieved outstanding merits —either civil or military— distinguishing them with a distinctive sign (medals, orders, honours and other awards) can be drawn back to the times of the ancient Greeks, more precisely, to the final times of the Hellenistic period. Following the excellent study by Fuhrmann (1992) we can find the origin of this debate in Aristotle's *Politics*. In it, the author from Stagira discusses the convenience of distinguishing publicly (τιμή) those citizens who had acted in favour of the *polis*, concluding that, although it might have a positive effect, it should be discharged because of the danger abuse:

“Although this idea might seem attractive, it is not riskless. It might, in fact, incite wrong awarding and cause political disturbs”. [Aristotle (1951:50)]

But, these are the thoughts of a philosopher, not of a statesman, and we have broad evidence that civil orders were very common in times of Aristotle, and even about the hot tempered discussions about their awarding. As an example, we might adduce the discussion in 336 BC about the convenience of publicly distinguishing Demosthenes (384-332 BC) for his merits in favour of the Athens. Ctesiphon proposed that his friend Demosthenes should be rewarded with a golden crown<sup>iii</sup> for his distinguished services to the state. The opposition to Demosthenes, headed by Aeschines (389-314 BC), tried to discredit the formers achievements defending Athenian independence from Philip's Macedonia, Aeschines accusing Ctesiphon of having violated the law in bringing forward the motion. The matter remained in abeyance till 330 BC (six years after the original event had taken place), when the two rivals delivered their speeches *Against Ctesiphon* and *On the Crown*, which resulted in a complete victory for Demosthenes. As Athens was then living a period of relative calm and political stability, the public debate between Demosthenes and Aeschines became a mayor event that attracted crowds from abroad Athens, being termed by Theophrastus the “Battle of Speakers”.

Formally, it was Ctesiphon who was being accused; nevertheless it was clear to everybody that the attack was really directed against Demosthenes. In his speech, Aeschines adduced, —besides the strictly legal arguments— on the risk of an “inflation” of orders due to a relaxation in the merits needed for the awarding. Due to the importance of his argument we believe it is worth quoting in length:

“And now that I have mentioned crowns and public honors, while it yet rests on my mind, let me recommend this precaution. It must be your part, Athenians, to put an end to this frequency of public honors, these precipitate grants of crowns; else they who obtain them will owe you no acknowledgment, nor shall the state receive the least advantage; for you never can make bad men better, and those of real merit must be cast into the utmost dejection. Of this truth I shall convince you by the most powerful arguments. Suppose a man should ask at what time this state supported the most illustrious reputation in the present days, or in those of our ancestors? With one voice you would reply, “In the days of our ancestors”. At what time did our citizens display the greatest merit then or now? They were then eminent; now, much less distinguished. At what time were rewards, crowns, proclamations, and public honors of every kind most frequent —then or now? Then they were rare and truly valuable; then the name of merit bore the highest lustre; but now it is tarnished and effaced; while your honors are conferred by course and custom, not with judgment and distinction. It may possibly seem unaccountable that rewards are now more frequent, yet that public affairs were then more flourishing; that our citizens are now less worthy, but were then of real eminence. This is a difficulty which I shall endeavor to obviate. Do you imagine, Athenians, that any man whatever would engage in the games held on our festivals, or in any others where the victors receive a crown, in the exercises of wrestling, or in any of the several athletic contests, if the crown was to be conferred, not on the most worthy, but on the man of greatest interest? Surely no man would engage. But now, as the reward of such their victory is rare, hardly to be obtained, truly honorable, and never to be forgotten, there are champions found ready to submit to the severest preparatory discipline, and to encounter all the dangers of the contest.” [Aeschines [330 BC] (1961), p. 1308]

As we will demonstrate in this paper, Aeschines arguments are still valid today, and the current Spanish civil orders system suffers of exactly the same problems and bears the same risks he stated referring to Athens —only that nowadays nobody seems to care, and it does not seem probable that a speech of this sort would attract any public interest.

### 3. Empirical analysis

In recent times Spanish media have mainly —not to say exclusively— covered news regarding orders and awards in those cases which seem of dubious merit or even worst, due to favoritism. This easily generates in the public view a general suspiciousness towards the Premial system as a whole (cf. Castellano, 2010).

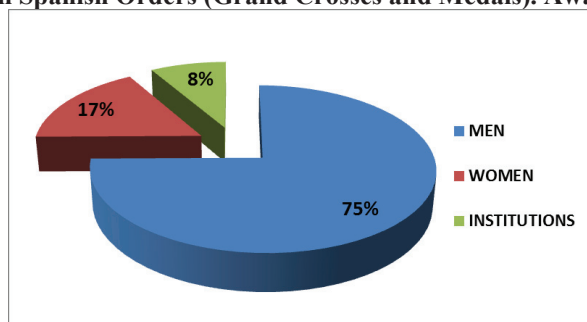
Does the existence of such cases of dubious awardings that reflect the merits required for the bestowing of orders are being loosened? In this part of our work we try to empirically contrast this hypothesis. Due to the restriction of numerical information (unlike other European countries, such as Germany or Great Britain, Spain lacks a Chancellery of orders), we will have to limit our study to the highest grades (or classes) of each order —collars and grand crosses— as their awarding have to be published in the Official State Gazette (BOE, *Boletín Oficial del Estado*). The time frame is set between 1995 and 2009, thus permitting us to differentiate between legislature periods governed both by the popular and the socialist party. Only three orders —the *Orden de Alfonso X El Sabio*, the *Orden de San Raimundo de Peñafort* and the *Orden de Solidaridad Social*— diminish or remain constant.

Consequently, we may conclude, that eight out of eleven orders present (in some cases sharp) increases in the number of awardings. This would again validate our hypothesis of an inflation of civil orders. As we have already stated before, this raising tendency contravenes the general trend of other European countries, like Germany’s *Bundesverdienstkreuz* (vid supra) or the French *Légion d’Honneur*.

Two other questions might be worth pointing out. First, it seems paradox that the most seldom awarded Grand Cross —and, thus, the one that could be considered in highest esteem— is the one corresponding to the

Order of the Agricultural Merit (even though it is bestowed in three different categories: Agricultural Merit, Fishing Merits and Forestal Merits). Second, as can be seen in figure 1, during the period studied only 17 percent of the orders were awarded to women (with slightly higher values in Medal of Work, the order of Carlos III and that of Merits in Sports). As a comparison: between 1965 and 2004 the percentage of orders awarded to women in Great Britain shifted from 16 to 35 (Phillips, 2004:73). Also, the german *Bundesverdienstkreuz*, went up from 16 to 25 in 2007 percent, when the former President of the Federal Republic, Horst Köhler, adopted a politic that favored awardings to women, after what this valued raised to 30.5 percent in 2009. For its part, the *Légion d'Honneur* has moved from a feminine quota of 8 percent in 1985 to 18 percent in 2006, showing from then on a clear tendency towards a more equal distribution between genders, as shown by the fact, that already in 2005 the numbers of women proposed for the *Légion* reached 50 percent. Thus, it seems more astonishing that Spain lacks so far behind in this question, even after nearly eight years of a socialist government, which considers gender equality one of its main goals and created a specific Ministry for this matter.

**Figure 1: Civil Spanish Orders (Grand Crosses and Medals). Awards by gender.**



The Chi-Square Tests applied to the variables *period of office* and *gender* suggests that both variables are significantly positively associated. Of a total of 3606 awards, 592 were awarded during the first period of office of the *Partido Popular* (16.4 % of the total), 1592 (44.1%) during the second, and 1422 (39.4%) during the first period of office of *Zapatero*.

*Table 1. Chi-Square Test*

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	110.501	4	,000
Likelihood Ratio	114,471	4	,000
Linear-by-Linear Ass.	46,162	1	,000
N of Valid Cases	3606		

If we consider the differences between each of the three periods, the percentage of men awarded was higher than the theoretically expected during the first and the second period of office of the *Partido Popular*, and lower during Zapatero's government. On the other way, in the case of women and institutions, the percentage of awarded was only higher than the theoretically expected during the period of office of the PSOE. In other words, we can conclude that *Partido Popular* has a tendency to decorate more men of the theoretically expected, whereas the *Partido Socialista* tends to decorate more women and institutions.

Table 2. ANOVA

Frequency	Sum of Sq.	df	Mean Sq.	F	Sig.
Between Groups	387958,181	2	193979,090	143,457	,000
Within Groups	4871806,653	3603	1352,175		
Total	5259844,834	3605			

Table 3. Tests of Robustness

	Statistic	df 1	df 2	Sig.
Levene	173,937	2	3603	,000
Weich	357,287	2	2254	,000
Brown-Forsythe	187,135	2	3557	,000

Table 4. Multiple comparisons

Office I	Office II.	Mean Difference (I-J)	Std. error	Sig.	95% confi. Interv	
					Lower b.	Upper b.
PP1	PP2	-17,676*	1,321	,000	-20,79	-14,56
	PSOE1	-29,287*	1,680	,000	-33,24	-25,33
PP2	PP1	17,676*	1,321	,000	14,56	20,79
	PSOE1	-11,612*	2,069	,000	-16,47	.6,75
PSOE1	PP1	29,297*	1,680	,000	25,33	33,24
	PP2	11,612*	2,069	,000	6,75	16,47

\*The mean difference is significant at the 0.05 level.

The analysis of variance, suggests that the means in the number of decorated between each of the three periods of office are significantly different ( $p$ -value  $< .05$ ). In our case we cannot assume equality of variances (see the result of Levene statistic), so is necessary to use the Robust Tests of Equality of Means to corroborate our results. As we can deduce of this test, the  $p$ -value in both cases is  $< .05$ , so we can now reject the null hypothesis of equality of means.

On the other hand, as we can see in the Multiple Comparisons post hoc analysis (table 2), the mean difference is significant at the .05 level in all the cases, so we can conclude that the number of awardings is not only increasing, but statistically different between periods, although they are less accentuated between the last two periods of office.

#### 4. Conclusions

The main aim of this study has been to analyze the Spanish Laudative System from an economic viewpoint. For this purpose, we start with a brief overview of the evolution and current situation of the Spanish Premial System. We then analyze the concepts of “merit” and “meritorious” as they constitute the base upon which to decide which actions should be worth a social distinction. After a brief presentation of the current system of civil orders in Spain, we enter the nucleus of our study: the question whether an uncontrolled awarding of orders and medals could derive in inflation, thus conducting to a devaluation of the underlying merits and, as a consequence, a distortion (or, worst, a corruption) of the whole Premial Law. Our study is completed with an empirical analysis of the highest classes of the Spanish civil awards, which confirms the previous hypothesis.

This question, which has so far been ignored by Spanish politicians, has nevertheless attracted the attention of several other European governments (see for examples Philips, 2004), which have substantially reformed

their Premial Law in recent times. As we have already pointed out, Spain presents an opposite trend regarding the awarding of others in comparison to France, Germany or Great Britain. In addition to this, Spain also presents a heavy bias towards men in the number of awards, while France and Germany have a much more equilibrated distribution by gender. Finally, Spanish Laudative Law suffers from a proliferation regional of orders that complement the already complex system on national awards, without any instance coordinating them. In this sense, Germany's decision to limit the number of awards per year (e.g. restricting to 30 the maximum of awards to be bestowed to Members of the Parliament), and favoring awards to women, might show the path to be followed.

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<sup>i</sup> Supposedly, "positive" incentives like tax reductions should actually be considered a lessening of a negative incentive.

<sup>ii</sup> According to Frey (2005), p. 33 awards constitute a type of non-material extrinsic reward whose efficiency as incentive instrument is determined by: (1) The more effective self-imposed restrictions to control the number of awards are. (2) The more the donor is able to differentiate between awards. (3) The lower the probability is that the award is publicly refused. (4) The less possible it is to formulate specific ex-ante contracts, and to monitor them ex-post. (5) The more important intrinsic motivation is. (6) The fewer the other principals are able to independently supply similar awards.

<sup>iii</sup> The golden crown was one of the most important civil awards conferred in Athens.